

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 17-CR-00301(NGG)

-against- : United States Courthouse

: Brooklyn, New York

: Friday, September 21, 2018

SEAN PRICE, : 10:00 a.m.

Defendant. :

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES SENIOR DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 (Judge NICHOLAS G. GARAUFIS takes the bench.)

3 THE COURT: Please be seated in the back. We are
4 waiting for the defendant.

5 (Defendant enters courtroom.)

6 THE COURT: Appearances, please.

7 MS. CASTRO: Good morning, Your Honor. Monica
8 Castro for the United States.

9 THE COURT: Good morning.

10 MS. MERKL: Taryn Merkl for the United States. And
11 Special Agent Christopher Davies of the Department of Homeland
12 Security.

13 MS. ORENSTEIN: And Karin Orenstein for the United
14 States.

15 Good morning, Your Honor.

16 THE COURT: Good morning, everyone. Please be
17 seated.

18 MS. DOLAN: And Zoe Dolan for defendant Sean Price
19 who is present and in custody.

20 Good morning, Your Honor.

21 THE COURT: Good morning. Good morning, Mr. Price.

22 All right, first thing we need to do is, Ms. Dolan,
23 I understand that you had some communication with your client
24 respecting your representation, so we need to deal with that
25 first.

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1 MS. DOLAN: Well, just to be clear, it was actually
2 from his mother after I had met with him regarding sentencing
3 on Friday. But at any rate, Mr. Price has just informed me
4 that he does not wish to request new counsel or to represent
5 himself.

6 THE COURT: All right.

7 Is that true, Mr. Price?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay, very well. So then we will
10 proceed with the process.

11 There are some late motions that have been brought
12 by the defense, and why don't we go over that first.

13 Ms. Dolan.

14 MS. DOLAN: Yes.

15 In speaking with Mr. Price in preparation for the
16 sentencing he did ask me to raise and preserve this issue, and
17 so I have endeavored to do so. I apologize that it wasn't
18 briefed as thoroughly as I might have done. I was uncertain
19 of the status of my representation, but nevertheless wanted to
20 ensure that the issue had, at least, been raised.

21 I think at this point we would submit on the papers.
22 I have nothing further to add beyond what I've already argued,
23 although I am happy to address any questions that the Court
24 has.

25 THE COURT: All right. All I would like you to do

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1 is identify what the precise application is, or what the
2 motion is so that I can hear from the Government, not on all
3 the background or the legal arguments, but on what the
4 infirmity is that you are raising with the Court at this
5 point.

6 MS. DOLAN: Well, our position is that there is
7 nothing in the record to establish that the NYPD had probable
8 cause to arrest Mr. Price at the time of his arrest and,
9 therefore, any statements elicited from him at the precinct
10 should have been suppressed. And I think that it's
11 particularly pertinent as to Counts One, Two and Three
12 because, as I argued in the papers, his -- Mr. Price's
13 statement concerning whether he had sex with Jane Doe in
14 New York was the only direct evidence that the Government
15 admitted on that precise question.

16 I take the Government's arguments with respect to
17 all of the circumstantial evidence surrounding the jury's
18 possible conclusion there, but I think it's an infirmity
19 because it is the only direct evidence of it and it, arguably,
20 should not have been admitted into the trial.

21 There are states that they passed through where Jane
22 Doe was of the age of maturity and could legally consent. So
23 I do think that -- which I argued previously, so I do think
24 that this issue is a meaningful one.

25 THE COURT: Okay, thank you.

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1 Ms. Castro.

2 MS. CASTRO: Yes; thank you, Your Honor.

3 As set out in the Government's papers, the fact of
4 the defendants' having sexual intercourse with Jane Doe is
5 simply not an element of any of the crimes of conviction. The
6 Government charged the defendant and he was convicted of
7 transporting Jane Doe for the purposes of engaging in illegal
8 sex. It need not be the case that we proved he had sex with
9 her. Of course, that was borne out in the evidence, but even
10 absent that point there is ample evidence to prove that the
11 defendant transported her with the purpose of engaging in sex
12 with her in New York, which would be illegal. And that, in
13 and of itself, establishes the crimes of conviction.

14 So to the point of whether or not this could be
15 dispositive in any way, the Government submits that it would
16 not be. In any event, it is clear that there was ample basis
17 to arrest the defendant when the young minor was found in his
18 home.

19 The defense counsel in her letter cites to certain
20 investigative notes from the Australian authorities, and they
21 all predate what the officers observed on the day of the
22 defendant's arrest. They discuss questioning the defendant
23 regarding money transfers, for example, that they knew he had
24 submitted to the young minor who had been missing. The day of
25 these -- at that point in time it was not known if the minor

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1 was, indeed, with the defendant. At the time of his arrest,
2 law enforcement not only had the additional background from
3 Australia, but they had seen him in the presence of this young
4 minor and they had seen him attempting to flee with her. At
5 the point of that recovery, there was ample basis to arrest
6 and any notes that might predate that discovery is simply
7 irrelevant to the probable cause to arrest him at that point
8 in time.

9 So the Government submits that this is not
10 dispositive in any way and that, in any event, there was ample
11 basis to arrest the defendant the day that he was arrested,
12 Your Honor.

13 THE COURT: All right.

14 The Court concludes that there was ample
15 justification for the arrest and that the defendant's arrest,
16 therefore, and questioning was proper and the other basis for
17 the motion is also unsuccessful. So the motions, the defense
18 motions in the defense's letter of September 17th are
19 overruled.

20 So we are going to go ahead with the sentencing.

21 Now, I am going to go over the materials that I have
22 for sentencing to make sure that everyone has the same
23 materials.

24 There is a pre-sentence investigation report
25 prepared May 1st, 2018. Does the Government have a copy?

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1 MS. CASTRO: Yes, Your Honor.

2 THE COURT: Does the defense have a copy?

3 (Pause.)

4 THE COURT: Do you have a copy of the pre-sentence
5 report?

6 MS. DOLAN: I'm sorry, he didn't -- Mr. Price was
7 conversing with me.

8 THE COURT: Do you have a copy of the pre-sentence
9 report?

10 MS. DOLAN: Not with me.

11 THE COURT: No, no, no. Have you reviewed the
12 report with your client?

13 MS. DOLAN: Yes, I've reviewed this -- he has a
14 copy -- Mr. Price has a copy, an actual copy of everything,
15 save for the September 20th letter from the Government
16 concerning the motion that the Court just ruled on; the third
17 addendum to the pre-sentence report; and the September 19th
18 submission by the Government with respect to sentencing.
19 Although, I have discussed the substance of those submissions
20 with him. He was provided with a copy of everything else in
21 the record up to now.

22 THE COURT: Okay, I am just trying to make sure that
23 we go over everything that is in this file.

24 MS. DOLAN: Yes, of course.

25 THE COURT: All right.

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1 MS. DOLAN: He does have a copy of the PSR.

2 THE COURT: And you have reviewed it with him?

3 MS. DOLAN: Yes, I have.

4 THE COURT: Thank you very much.

5 There are three addenda to the pre-sentence report.

6 Do both sides have that?

7 MS. CASTRO: Yes, Your Honor.

8 MS. DOLAN: Yes, Your Honor.

9 THE COURT: And you have reviewed that with your
10 client?

11 MS. DOLAN: Yes, and he has copies of the first two
12 and I've reviewed the third.

13 THE COURT: Okay, that's good.

14 There is a September 14th, 2018 letter from the
15 defense attaching two exhibits, one of which Exhibit A is
16 reported Dr. Richard Kreuger.

17 Has the Government received a copy of that?

18 MS. CASTRO: Yes, Your Honor.

19 THE COURT: There is a September 14th, 2018 letter
20 from Ms. Dolan to the Court in the nature of a sentencing
21 submission.

22 Has the Government reviewed that?

23 MS. CASTRO: Yes, Your Honor.

24 THE COURT: Attached to that report are several
25 letters from a number of individuals in support of the

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1 defendant.

2 Has the Government seen that?

3 MS. CASTRO: Yes, Your Honor.

4 THE COURT: And also, Exhibit B is a certificate;
5 and Exhibit C is a letter from Mr. Price; Exhibit D is a
6 Brennan Center report entitled "What Caused the Crime
7 Decline"?

8 Have you seen that?

9 MS. CASTRO: Yes, Your Honor.

10 THE COURT: And then Exhibit E is a National
11 Institute of Justice publication.

12 Have you seen that?

13 MS. CASTRO: Yes, Your Honor.

14 THE COURT: Now, there is a letter, the Government's
15 letter of September 10th, 2018 in advance of sentencing
16 dealing with certain issues, including the sentencing
17 guidelines.

18 Have you seen that?

19 MS. DOLAN: Yes, I have, Your Honor.

20 THE COURT: Then there is, I think I mentioned the
21 September 14th, 2018 letter from the defense.

22 MS. CASTRO: Yes, Your Honor.

23 THE COURT: You have seen that?

24 MS. CASTRO: Yes, Your Honor.

25 THE COURT: Now, there were several letters,

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1 handwritten letters from the defendant to the Court. There is
2 a letter of June 28th, 2018 and there is another letter, a
3 one-page letter received by the Court on August 3rd, 2018.

4 Have you seen those?

5 MS. DOLAN: I've seen the June letter. I don't know
6 if I've seen the August 3rd letter, actually.

7 THE COURT: Let me show it to you. I think the
8 Government responded to that.

9 Did it not?

10 MS. CASTRO: To the August 3rd letter?

11 THE COURT: Have you seen it?

12 MS. DOLAN: Was this a motion?

13 THE COURT: This is a letter as to why Count Four of
14 the charges should --

15 MS. DOLAN: Oh, right.

16 THE COURT: Have you seen that?

17 MS. DOLAN: Yes, I have.

18 THE COURT: Have you seen it?

19 MS. CASTRO: Yes, Your Honor.

20 THE COURT: It was filed on August 3rd on ECF, so it
21 is out there. I just want to make sure you have seen it --

22 MS. DOLAN: Yes.

23 MS. CASTRO: With the additional context, yes, Your
24 Honor.

25 MS. DOLAN: Yes, I recall now.

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1 THE COURT: Okay, that's fine.

2 And then there is the Government's letter of
3 September 19th, which is in the nature of a sentencing
4 memorandum.

5 You've seen that?

6 MS. DOLAN: Yes, I have.

7 THE COURT: And setting forth the Government's view
8 as to the guideline calculation.

9 And we have another visitor.

10 (USPO Patricia Sullivan enters courtroom.)

11 USPO SULLIVAN: Apologies, Your Honor, for my
12 lateness.

13 THE COURT: That's okay, just state your appearance.

14 USPO SULLIVAN: Patricia Sullivan, Probation.

15 Good morning, Your Honor.

16 THE COURT: Yes, thank you very much. Welcome.

17 USPO SULLIVAN: Thank you, Your Honor.

18 THE COURT: So I think that is everything. Is there
19 anything else?

20 MS. DOLAN: I think that covers all the sentencing-
21 related submissions.

22 THE COURT: Right, that is what I mean; yes.

23 MS. DOLAN: Yes.

24 THE COURT: Thank you.

25 All right, so the next step is for the Court to

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1 establish the correct guideline, and there was some
2 disagreement with the guideline calculation. So what I am
3 going to do is go over the Probation Department's final
4 calculation.

5 I think it is in the third addendum, is it?

6 USPO SULLIVAN: Correct, Your Honor.

7 THE COURT: Let's look at the third addendum and
8 then we can discuss these.

9 Now, the defendant was found guilty of Counts One,
10 Two, Three and Four of the Indictment on which he is charged.

11 Count One charged him with interstate and foreign
12 enticement to engage in illegal sexual activity under 18
13 United States Code Section 2422(a), it is a Class C felony,
14 and the statutory maximum for that crime is 20 years'
15 imprisonment.

16 Count Two is interstate and foreign transportation
17 of a minor to engage in illegal sexual activity, 18 United
18 States Code Section 2423(a). And the statutory range there is
19 a 10-year minimum to life imprisonment; a Class A felony.

20 Count Three is a Mann Act violation, transportation
21 of an individual with intent to commit rape, 18 United States
22 Code Section 2421. That has a maximum sentence of ten years,
23 a Class C felony.

24 Count Four is attempted sexual exploitation of a
25 child under 18 United States Code, Section 2251(a) and 18

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1 United States Code Section 2251(e). That charge is subject to
2 a 15-year minimum and a 30-year maximum imprisonment period.
3 And the defendant was acquitted of Counts Five, Six, Seven and
4 Eight.

5 MS. CASTRO: Yes, Your Honor.

6 THE COURT: So at this point we need to go over the
7 guideline calculation.

8 According to the third addendum on Counts One, Two
9 and Three -- do you have an extra copy of your addendum? How
10 many pages is your addendum?

11 USPO SULLIVAN: One, two -- three, Your Honor.

12 THE COURT: I am missing page 2 in my copy. The
13 base offense level is a 28, is it not?

14 USPO SULLIVAN: It is, Your Honor.

15 THE COURT: Does everyone agree with that?

16 MS. CASTRO: Yes, Your Honor.

17 THE COURT: That would be in the original. It is
18 not listed on --

19 MS. DOLAN: Oh, I see.

20 THE COURT: It is not listed on the addendum, that
21 is listed on the original PSR.

22 MS. DOLAN: I understand now, we are talking about
23 base offense level, not adjusted.

24 THE COURT: Yes, I am just trying to go over
25 everything.

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1 MS. DOLAN: I understand that.

2 THE COURT: So does everyone agree the base offense
3 level is a 28?

4 MS. DOLAN: Yes, I do. I have general objections to
5 the guidelines, so I am trying to choose my words
6 appropriately, but I agree --

7 THE COURT: I'm sorry, general objections in
8 principal or you think that the guidelines that have been
9 promulgated are excessive or because the guidelines, as they
10 apply to this case, are improper?

11 MS. DOLAN: Right, the first, the former. So I do
12 acknowledge that that is the guidelines base offense level.

13 THE COURT: Okay, all right, that is really what --
14 and I want to go step-by-step here.

15 Then there is a two-level enhancement, in that the
16 defendant otherwise unduly influenced Jane Doe to engage in
17 prohibited sexual conduct and was at least ten years older
18 than Jane Doe, as such Jane Doe was unduly influenced, and
19 there was a two-level enhancement under Section 2G1.3(b)2B.

20 Does the Government agree with that?

21 MS. CASTRO: Yes, Your Honor.

22 MS. DOLAN: Yes, we object to that. The evidence, a
23 lot of which the Court didn't see, is pretty copious that
24 the -- if -- it is very difficult to make this argument, but
25 in looking at the correspondence on Facebook between Jane Doe

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1 and Mr. Price, I have to draw the conclusion that the
2 influence that was being exerted was by her. The Government,
3 I think, really strained to prove encouragement and
4 enticement. This was really a plan that Jane Doe came up with
5 and was going to -- was going to follow through on no matter
6 what.

7 So I -- and repeatedly, she initiated contact with
8 Mr. Price. She came up with the plan for her own passport,
9 which she had to figure out how to get. Mr. Price had no idea
10 how to advise her on that. She got herself her plane tickets
11 and came across an ocean to the United States.

12 So I don't think that the undue influence was coming
13 from Mr. Price by any means, so I would object to that.

14 MS. CASTRO: Your Honor, as a factual matter, at the
15 time the defendant was 39 and Jane Doe was 16. There is a
16 reason that the guidelines assume that such a large age
17 disparity would create an assumption of undue influence.

18 In any event, the notion that she was going to do
19 this no matter what is not borne out by the evidence. What is
20 clear is that Jane Doe made references to wanting to run away
21 from home. It is equally clear that the defendant encouraged
22 her specifically to run away to him and that he did so
23 specifically for the purposes of his own sexual gratification.

24 The Government has submitted in their sentencing
25 memorandum an exhibit where it shows the defendant's response

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1 to mentions by Jane Doe of running away to any place other
2 than to New York to be with him. He responded with anger and
3 withdrawal from her. This is not some -- it is not simply the
4 case that no matter what she was going to come here to be with
5 the defendant. He encouraged her and egged her on and pushed
6 her to do so. And there were instances, Your Honor, where as
7 a 16-year-old she expressed anxiety and fear about going
8 through with this plan and the defendant is seen encouraging
9 her, telling her be strong, endure, go through with it.

10 So it's simply untrue that no matter what, absent
11 the defendant, this was going to be occurring. Their age
12 difference is significant here and the notion that she was
13 encouraging the defendant is -- just flies in the face of this
14 age disparity. This is a young girl. It's the defendant's
15 responsibility as an adult to not take advantage of her poor
16 decisions and her vulnerability, and the record is clear that
17 he did. He did take advantage of that. I.

18 I think it's absolutely clear that he unduly
19 influenced her. He found her a very vulnerable victim and he
20 exploited those vulnerabilities.

21 MS. DOLAN: I just have to --

22 MS. CASTRO: Your Honor, I'm sorry.

23 It is also the case that she was able to purchase
24 her ticket and fly here because the defendant sent her the
25 money. He sent her the money and she bought her ticket the

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1 very next day. She was not able to get here without the
2 defendant's money.

3 MS. DOLAN: So I just have to push back on this in
4 this case because, as unpleasant as it is, you know, as the
5 record at trial establishes, Jane Doe did obtain money from
6 someone else prior to her contact in Mexico, prior to her
7 contact with Mr. Price. And the evidence in her computer,
8 which I discussed with the Court which was excluded from the
9 jury's consideration, included, among other things, pictures
10 of 20 to 40 middle-aged black men who, I guess, she was
11 targeting. She had 40,000 followers on Instagram.

12 And so while Mr. Price, obviously, should not have
13 engaged in this -- in this conduct, we are just sort of piling
14 on enhancements that I don't think are borne out by a close
15 review of the evidence.

16 THE COURT: Thank you. I believe that the
17 requirements of the Sentencing Guidelines in connection with
18 this specific offense characteristic have been met. I
19 overrule the objection.

20 Next, in paragraph 28 of the PSR, another specific
21 defense characteristic, as the instant offense involved the
22 use of a computer or an interactive computer service to
23 persuade, induce, entice, coerce or facilitate the travel of
24 Jane Doe to encourage and for the prohibited sexual conduct,
25 two levels are added pursuant to Sentencing Guideline

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1 2G1.3(b)3A, two levels.

2 MS. DOLAN: So we also object to this. I just
3 thought of it this morning, and I did some preliminary
4 research, but I believe if I'm reading the guidelines
5 correctly, this is an original from the very first
6 promulgation of the guidelines in 1984 when the use of a
7 computer was, in fact, something that might trigger an
8 enhancement conceivably because it was a more sophisticated
9 criminal enterprise, but now it's hard to imagine any human
10 activity that does not involve a computer.

11 So, again, we would object to this sort of Pavlovian
12 increase, and I'll get to this again later when I talk about
13 the Sentencing Guidelines generally, but I just don't think
14 these enhancements are warranted.

15 THE COURT: I understand.

16 Yes; anything from the Government?

17 MS. CASTRO: Your Honor, I think it's more an
18 objection to the guidelines generally, as opposed to the fact
19 that it would apply in this instance.

20 THE COURT: Yes, I would agree with that. I also
21 point out, it may sound old-fashioned, but people could write
22 letters, they could use the telephone. This is specific to
23 the computer, and certainly the use of a computer facilitates
24 this kind of behavior and the Sentencing Commission has not
25 removed this enhancement from the guidelines. And until it

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1 does, it applies. So the objection is overruled.

2 Next, paragraph 29 in the PSR, another specific
3 offense characteristic as the offense involved the commission
4 of a sex act per Sentencing Guideline 2G1.3(b)4 two levels are
5 added.

6 Do you object to that?

7 MS. DOLAN: This is inherent in the charges. So
8 it's just double, triple, quadruple, quintuple punishment.

9 THE COURT: I see.

10 MS. DOLAN: We object.

11 MS. CASTRO: Again, Your Honor, it reads as an
12 objection to the guidelines generally, as opposed to whether
13 or not it applies here.

14 THE COURT: All right, the objection is overruled.

15 Then paragraph 30 from the addendum, the third
16 addendum --

17 USPO SULLIVAN: Yes, Your Honor.

18 THE COURT: Victim-related adjustment. The
19 defendant knew or should have known the victim of the offense
20 was a vulnerable victim; therefore, the offense level is
21 increased by two levels.

22 Do you object to that?

23 MS. DOLAN: Yes, I think I've previously covered the
24 reasons why.

25 THE COURT: Right, I think you did.

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1 MS. DOLAN: We object.

2 THE COURT: And in your submission you covered that
3 as well?

4 MS. CASTRO: Yes, Your Honor.

5 THE COURT: So the objection is overruled. There is
6 substantial basis to include this adjustment.

7 So the adjusted total offense level is now instead
8 of a 36, it is a 38. Is that right?

9 USPO SULLIVAN: Correct, Your Honor.

10 THE COURT: You agree, the Probation Department
11 agrees with that?

12 USPO SULLIVAN: Yes, Your Honor.

13 THE COURT: And the Government agrees with that?

14 MS. CASTRO: Yes, Your Honor. I apologize if I
15 missed it. Did we address the obstruction enhancement? I
16 believe it's paragraph 32 of the original PSR.

17 THE COURT: I'm sorry, 32. I did not address it.
18 It is here, though. Let's go back to 32.

19 In paragraph 32 there is an enhancement for
20 obstruction of justice. The defendant willfully obstructed or
21 impeded or attempted to obstruct or impede the administration
22 of justice with respect to the investigation, the prosecution
23 or sentencing of the instant offense of conviction and the
24 obstructive conduct related to the defendant's offense of
25 conviction and any relevant conduct or closely-related

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1 offense. Therefore, two levels are added pursuant to the
2 Sentencing Guideline 3C1.1.

3 You object to that?

4 MS. DOLAN: We object to that.

5 THE COURT: Right. And the reason for that is?

6 MS. CASTRO: Your Honor, as presented in one of the
7 jail calls submitted into evidence at trial, the defendant is
8 heard reaching out to his mother and asking her to contact
9 someone who he referred to as *that person*. In doing so, he
10 provided an Australian phone number. It did turn out to not
11 be the correct number for Jane Doe, but in any event he's
12 heard telling his mother that she should reach *that person* and
13 tell *her* not to cross the pond for any reason and, if need be,
14 to use her mental status to avoid it.

15 In addition to that, Your Honor, in an August 28th,
16 2017 submission regarding the motion to suppress, the
17 defendant made certain claims regarding whether or not he
18 provided consent with respect to the seized telephones in this
19 case. He said that he had not and, of course, when documents
20 with his signature showing that he did provide consent ran
21 counter to that. He also provided the passwords for those
22 phones, and so it further belies the notion that he was not
23 involved in providing consent to his phones. The Government
24 submits that there is ample basis for the obstruction
25 enhancement.

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1 THE COURT: Do you want to say more on that?

2 MS. DOLAN: Only that it was Jane Doe who destroyed,
3 attempted to wipe her computer.

4 And as to the question of consent, I think that
5 would fall under the umbrella of the motion to suppress that
6 we just made. So I wouldn't consider it an adequate basis for
7 the obstruction enhancement.

8 THE COURT: All right, I am overruling the
9 objection.

10 And so going back to the totals, the adjusted
11 offense level is a 38, to which the Government agrees and
12 Probation agrees and the defense objects.

13 MS. DOLAN: That's correct.

14 THE COURT: Okay. So that is Counts One, Two and
15 Three.

16 Count Four, on Count Four the base offense level is
17 a 32. There is an additional two levels for commission of a
18 sex act, and there is an additional two levels for use of a
19 computer, and there is an additional two levels for a
20 vulnerable victim, and an additional two levels for
21 obstruction of justice.

22 So all of the objections that the defense had with
23 respect to those enhancements of Counts One, Two and Three are
24 also recognized by the Court.

25 MS. DOLAN: Thank you.

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1 THE COURT: For Count Four and the objections are
2 overruled.

3 MS. DOLAN: Thank you.

4 THE COURT: All right.

5 So the adjusted offense level for Count Four is a
6 40, to which the defense objects.

7 Does the Government agree with that calculation?

8 MS. CASTRO: Yes, Your Honor.

9 THE COURT: And.

10 USPO SULLIVAN: Yes.

11 THE COURT: And Probation agrees as well. So the
12 adjusted offense level for Counts One, Two and Three is a 38;
13 for Count Four, the adjusted offense level is a 40. The
14 multiple-count adjustment based on those adjusted offense
15 levels is two units and the greater offense level is a 40. So
16 the two units are added and the combined adjusted offense
17 level is a 42.

18 The defense objects?

19 MS. DOLAN: For all the reasons previously stated.

20 THE COURT: Right. And the Government agrees?

21 MS. CASTRO: Yes, Your Honor.

22 THE COURT: As does Probation?

23 USPO SULLIVAN: Yes, Your Honor.

24 THE COURT: As does the Court.

25 So based on a total offense Level 42 and -- oh, is

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1 there any comment on the criminal history category?

2 MS. DOLAN: Nothing to add.

3 MS. CASTRO: No, Your Honor.

4 THE COURT: All right.

5 And the Probation has determined the criminal

6 history contact the category is a VI?

7 USPO SULLIVAN: Correct, Your Honor.

8 THE COURT: And the Government agrees with that?

9 MS. CASTRO: Yes, Your Honor.

10 THE COURT: And you have nothing to do add?

11 MS. DOLAN: Nothing to add.

12 THE COURT: The Court agrees.

13 So with a Category VI, criminal history category,

14 and a total offense level of 42, the defendant's guideline

15 calculation is 360 months to life in prison.

16 And that's the Court's determination, which brings

17 us to the next stage of this process.

18 As I said before, let me just make it clear: All

19 motions that have been made, but not acted upon on the part of

20 the defense, are denied.

21 And the Government has no open motions, does it?

22 MS. CASTRO: No, Your Honor.

23 THE COURT: All right.

24 So the next step in the process is to determine the

25 appropriate sentence, taking into account all of the factors

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1 that are relevant under 18 United States Code Section 3553(a).
2 In order to impose a sentence that is sufficient, but not
3 greater than that necessary, to fulfill the purposes of
4 sentencing.

5 So let's start with you, Ms. Castro.

6 MS. CASTRO: Thank you, Your Honor.

7 Your Honor, in the defendant's sentencing
8 submissions a lot of terms are used to describe his conduct
9 here. They refer to his crimes, for example, as an ill-fated
10 love affair. Your Honor, this was not a romance. This was a
11 39-year-old man who took advantage of an incredibly vulnerable
12 16-year-old girl for his own sexual gratification and
13 financial gain. As laid out in the Government's sentencing
14 submission, this is a serious offense. It should be sentenced
15 accordingly.

16 The defendant raises some points as to what might be
17 considered mitigation here. The Government submits that none
18 of them hold up.

19 Principally, I'd like to address the notion of Jane
20 Doe's participation in the offense. Your Honor, this argument
21 simply takes or seeks to take some of the blame away from the
22 victim -- I apologize, away from the defendant and lay it at
23 the victim's feet and it should not be indulged here. As laid
24 out throughout the Government's sentencing submission, there's
25 ample evidence within the record that Jane Doe was

1 particularly vulnerable and susceptible to the manipulation of
2 someone in the defendant's shoes.

3 Any participation, despite being legally irrelevant
4 and impossible as a defense under the law, is simply a symptom
5 of the very same characteristics that rendered her vulnerable
6 to his actions.

7 The sentence here should reflect that the
8 exploitation of children, period, under any circumstances
9 should not be tolerated. And the notion of Jane Doe's
10 participation as mitigation is simply unacceptable.

11 Defendant also raises the notion of Jane Doe's age
12 as potential mitigation, suggesting that because they maintain
13 the age in Australia, of consent in Australia would be 16,
14 that the Court should deem it mitigation in this instance.
15 The record is clear that the defendant was well aware of Jane
16 Doe's age and simply did not care about it. He even stated in
17 one instance that he did not care about the fact that it was
18 illegal for him to have sex with her. One of the goals of
19 sentencing, Your Honor, is to promote respect for the law.
20 Deeming the law of other jurisdictions, particularly in the
21 face of a defendant who explicitly said he didn't care about
22 breaking the law, to be deemed any kind of mitigation here
23 runs counter to that aim.

24 Further, the notion that Jane Doe's age would have
25 somehow made all of the defendant's conduct legal if she had

1 turned 17 is also untrue. The defendant was convicted, in
2 addition to the transportation crimes, of attempting to
3 exploit a minor. She would have -- that offense would have
4 applied even if Jane Doe had been 17. So it's not simply the
5 case that her age, if some months had been added to the
6 timeline here, would have completely invalidated the offenses
7 of conviction here.

8 The defendant also discusses the notion that his
9 conduct, that the conduct here was aberrant behavior by the
10 defendant. Now, it's true that this is the defendant's first
11 sex offense, but the notion that this is aberrant behavior is
12 completely belied by the defendant's criminal history. In
13 fact, it's entirely consistent with someone who's acquired a
14 criminal history category of VI. The defendant has sustained
15 multiple convictions throughout the course of his life, and
16 this conviction is consistent with a notion or an individual
17 whose record reflects indifference towards the law and
18 indifference towards a potential consequences of his action.

19 Your Honor, particularly concerning to the
20 Government is the defendant's complete inability to take any
21 sense of responsibility for his actions here. And in the
22 defendant's submission he describes the circumstances that led
23 to this crime as him trying to help people. He says that his
24 biggest flaw is his big heart.

25 Your Honor --

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1 THE COURT: His big?

2 MS. CASTRO: Heart.

3 THE COURT: Heart.

4 MS. CASTRO: -- in a submission from Jane Doe's
5 mother, it's clear that this conduct has continued to have an
6 impact on Jane Doe's life and will for years to come. She
7 expressed that Jane Doe could not return to high school due to
8 mental health issues following this. Someone who's 16 years
9 old is now no longer in high school as a result of the
10 defendant's actions. She also says that she has undergone
11 intensive psychological treatments with a professional
12 psychologist. She's also received treatment from a forensic
13 psychiatrist. She suffered loss of friendships and the
14 ability to socialize.

15 Your Honor, these are all factors that will continue
16 to impact this girl's life for the rest of her life, not to
17 mention the impact that the defendant's crimes had on her
18 family. Her mother describes recurring flashbacks of her
19 daughter disappearing.

20 Now, the Government objects vehemently to any notion
21 that Jane Doe's conduct should be held against her and
22 credited to the defendant, but even setting that aside, what
23 of the family's impact here? Are we to blame them in some way
24 and also not refer to that in considering the defendant's
25 actions here?

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1 His conduct will continue to affect Jane Doe's
2 family for years to come. And in the face of that, the
3 defendant shows little remorse. In fact, I am going to
4 rephrase that, the defendant shows no remorse. He maintains
5 he was trying to help. And that is completely belied by the
6 record.

7 This defendant's plan was to bring a 16-year-old
8 girl who he knew to be vulnerable for a number of reasons. He
9 was well aware of Jane Doe's struggles. His plan was to bring
10 her here for his sexual gratification and to put her on a pole
11 as a stripper for his own financial gain. He's seen bragging
12 about it to his friends that he's about to be rich because
13 this young girl is going to come be a stripper in the United
14 States. This is not the conduct of someone who is trying to
15 help.

16 Your Honor, I would also like to address the report
17 of Dr. Kreuger that was submitted by the defendant. The
18 Government submits that it should be disregarded in its
19 entirety. The conclusion by Dr. Kreuger rests in large part
20 on the assessment that if the defendant were to receive
21 substance abuse treatment, he would be at a significantly
22 lower risk of re-offending. That is difficult to take at its
23 face given a comparison between the statements from the -- or
24 the responses from the defendant in his PSR interview as
25 compared to his discussions with Dr. Kreuger.

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1 The defendant states to Dr. Kreuger, in a typical
2 fashion of his tendency to minimize his conduct, that he was
3 under the influence of a number of drugs for the entirety of
4 his interactions with Jane Doe. That, of course, is an
5 incredible claim. The defendant was engaging with Jane Doe on
6 a daily basis from, at least, January 2017 to May 2017. It is
7 incredible to believe that the defendant was at all times
8 responding to substance abuse.

9 In any event, the defendant's claims with respect to
10 substance abuse as reported by Dr. Kreuger are significantly
11 overblown. The defendant in his PSR interview denied daily
12 use of drugs or of marijuana. He denied daily use of alcohol.
13 He mentioned that he had stopped using heroin in 2015. He
14 didn't mention cocaine at all. He did refer to crack cocaine,
15 and admitted he had used that through, at least, March 2017.
16 But, Your Honor, these inconsistencies render Dr. Kreuger's
17 conclusions unreliable.

18 Dr. Kreuger's conclusions are also internally
19 inconsistent. He concludes, for example, that the defendant
20 does not suffer from a disorder that is characterized, and I
21 am going to mess up the pronunciation of this disorder, Your
22 Honor, ephebophilia. Your Honor, it's described as a
23 problematic tendency toward sexual fantasies about young
24 teenagers. And as Dr. Kreuger puts it, in order to qualify
25 for this disorder, the defendant would have to have sustained

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1 fantasies for at least six months.

2 Your Honor, we know by the defendant's admission
3 that he met Jane Doe in October of 2016 online. You've seen
4 the defendant's discussions with Jane Doe from, at least,
5 December 2016 to April -- I apologize, yes, December 2016 to
6 April 2017. Those discussions contain recurring references
7 from the defendant about his sexual fantasies with respect to
8 Jane Doe, a teenager, and this occurred for more than six
9 months. So the notion that Dr. Kreuger can acknowledge all of
10 these points within his report and then simultaneously
11 conclude that the defendant doesn't suffer from this disorder,
12 again, invalidates Dr. Kreuger's conclusions.

13 I'd also like to address defense counsel's position
14 with respect to restitution.

15 Your Honor, the victims of this crime, Jane Doe and
16 her family as her guardians, are entitled to restitution under
17 the law. Jane Doe's mother has submitted an affidavit of loss
18 outlining what the family has incurred as a result of the
19 defendant's conduct and they are entitled to restitution in
20 the amount set forth in that affidavit.

21 Briefly, I'd like to also address forfeiture. The
22 Government is requesting forfeiture of two cell phones which
23 are identified in the Indictment. One was being used by the
24 defendant at the time of his arrest, and the second he had
25 provided to Jane Doe for her use after, we understand it,

1 after their arrival in New York.

2 The Government submits that both of these items are
3 instrumentalities of the crime. For example, the defendant's
4 cell phone is seen to have a search history where he's looking
5 up directions and inquiring about hotels in the locations
6 where he traveled with Jane Doe between California and
7 New York, their cross-country trip back home. It is clearly
8 an instrumentality of the offense. The phone for Jane Doe,
9 Your Honor, we submit was used as a further -- to further the
10 defendant's control of Jane Doe when she was here. He brought
11 her here so that he could have sex with her, which is a crime,
12 and the Government submits that Jane Doe's phone was another
13 means by which he continued to control her after her arriving
14 here. Indeed, the communications on Jane Doe's phone are
15 principally, if not exclusively, to the defendant.

16 In conclusion, Your Honor, the defendant's -- the
17 defendant's inability to take responsibility for his actions
18 here, coupled with his significant criminal history, create a
19 great deal of concern with respect to recidivism. It's
20 particularly important with respect to this defendant to
21 specifically deter future conduct with him. And with respect
22 to his arguments of mitigation, it is important to set forth a
23 clear message that under no circumstances should his conduct
24 be tolerated. And much less should his conduct be deemed
25 lessened in any way by the very facts that made Jane Doe so

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1 incredibly vulnerable to his manipulation of her.

2 So for this reason, Your Honor, the Government
3 submits that a sentence well above the applicable mandatory
4 minimum as is contemplated by the guidelines would be
5 appropriate here.

6 THE COURT: Thank you.

7 Ms. Dolan.

8 MS. DOLAN: If I could do it from the table?

9 THE COURT: Sure, that's fine.

10 MS. DOLAN: Thank you.

11 So I'll start with Jane Doe's participation.

12 The phrase willing participant actually comes from
13 Ms. Merkl during one of my discussions with her about a
14 potential plea. I wouldn't want the Court to be under the
15 misapprehension that Mr. Price would not have considered a
16 reasonable -- what we believe would have been or what he was
17 able to stomach as a reasonable plea offer. I was begging the
18 Government for that, and I think Mr. Price, I think I can say,
19 what's the best way to phrase this, he would have been more
20 than welcomed to considering an offer that, I think, would
21 have been more in the realm of something that he could go on
22 and live with.

23 So I think that the whole thrust of the Government's
24 sentencing arguments are not close to what we see on this side
25 of the courtroom.

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1 And I think the evidentiary support that I can offer
2 in favor of that, of that argument, is that I think the
3 Government's statement that Mr. Price's principal motivation
4 was that Jane Doe would earn money as a stripper is just
5 totally wrong. I think if you review the thousands of pages
6 of communications between these two people, the principal
7 motivation was loneliness.

8 Now, the Government will come back and make all the
9 arguments that it's just made about the age disparity and
10 whatnot and I am not here to argue that, but the human reality
11 is, I think, evidentially borne out there.

12 Now, I think --

13 THE COURT: Loneliness meaning that he could not
14 find an appropriate friend in Queens?

15 MS. DOLAN: I am loath to use the appropriate. I
16 pass no judgment on what was --

17 THE COURT: Appropriate to him, I am not saying
18 appropriate to you or to me, but the last time I looked at the
19 census there were 2.3 million people who lived in Queens, more
20 than half of whom are women. So it is not as if he is in a
21 town of 20 people in the middle of Nebraska.

22 MS. DOLAN: Well, if that had been the case, then
23 any one of those women could have become strippers, too. So I
24 don't think that that was the primary motivation, nor do I
25 think that there is evidentiary support.

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1 My role here is to principally bring out what I
2 think is the other side of the evidence. And I think we've
3 reached a point at this stage where I can say that I do
4 believe that the Government's -- the Government's framing of
5 the facts of this case, if not misleading, are at least
6 somewhat disingenuous.

7 As I've said before and as we argued at trial, there
8 were undulations to this relationship that typify any human
9 interaction and a significant portion of their interactions
10 were initiated by Jane Doe.

11 What we didn't go into at trial or in our sentencing
12 submission, because, frankly, I didn't think it would be
13 necessary based on the facts, was that Jane Doe was repeatedly
14 begging Mr. Price for a baby. So I don't know what was going
15 on there or what her motivation was, but I do think that her
16 willing participation is a factor that weighs against -- that
17 weighs toward asking what responsibility this family -- what
18 was going on in this family? And I think there are motivating
19 factors there that we simply are not aware of.

20 THE COURT: *This family*, meaning Jane Doe's family?

21 MS. DOLAN: Her mother was apparently, if I
22 understand it correctly, hospitalized for attempted suicide as
23 soon as she learned that Jane Doe had left the country and had
24 run away, which is, by the way, another reason why I don't
25 think that attributing \$40,000 worth of not working for a year

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1 to quote/unquote take care of Jane Doe would necessarily be
2 appropriate or warranted.

3 But the bottom line here is that something was
4 driving Jane Doe out of her home in Australia and she was
5 trying to escape it and she was going to do it at any cost and
6 so she did. And Mr. Price has been convicted, but
7 nevertheless, the one picture that we have of them as the
8 Court will remember from trial, Jane Doe is smiling. And it
9 certainly doesn't sound like she had a very happy home life.
10 It is unfortunate that she ended up here in these
11 circumstances, but here we are.

12 Dr. Kreuger's report was not submitted as
13 mitigating. I don't think it's a good report. If the
14 Government wants it out, I partially join in that application.
15 I didn't submit it to try to make the Court feel sorry for
16 Mr. Price. I don't think it's mitigating in that respect.
17 What I think it does identify is two things.

18 The first is the role not only that drugs played in
19 Mr. Price's criminal history, but the role that drug treatment
20 would play in his rehabilitation as an appropriate social
21 mechanism to deal with the problem here, rather than extending
22 incarceration.

23 And the second reason that I submitted that report,
24 which I don't think the Government has sufficiently rebutted,
25 is that there really -- I wanted to have some sort of

1 psychological evidence concerning whether Mr. Price, you know,
2 is a pedophile. And we don't have any information that this
3 was anything other than aberrant behavior. And in typical
4 fashion, instead of producing some sort of psychological
5 evidence or psychological analysis or expert testimony or
6 expert opinion, the Government just puts forth conjecture on
7 what their interpretation of psychological realities are.

8 Which brings me to the last thing, the guidelines,
9 just as a general matter. I've already argued that they're
10 repetitive.

11 Like the Government's arguments, you know, here I
12 am, I submitted -- once again, I've submitted the Brennan
13 Center report. The Government just ignores it. We have
14 tomes' worth of social science and statistics indicating that
15 the guidelines are too high. We all know it. The reason that
16 I submitted -- cited Judge Gwin's Harvard Law Review article
17 from, I think, 2015 is because he actually surveyed 22 juries
18 in Ohio, a swing state, and asked them what sentences should
19 be in all of those 22 cases. And what Judge Gwin found was
20 that the guidelines were a minimum of two, and often
21 four-and-a-half, times at a median point higher than they
22 ought to be.

23 You say, well, why does that matter, what difference
24 does that make? And the reason is because the United States
25 Congress directed the Sentencing Commission back in the early

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1 1980's to consider community sentiment when promulgating the
2 guidelines. They disregarded that mandate and instead looked
3 at 10,000 sentences from judges who are not community. We
4 know now, after Judge Gwin's findings, what the community
5 really thinks of the guidelines and we know that they are at
6 least twice, and at least in many cases four-and-a-half times,
7 higher than they should be.

8 So that is certainly not to abdicate responsibility,
9 but rather to the point of, well, what's an adequate sentence?

10 If you go to the low end of that, that's 10 months,
11 which is the lowest mandatory -- the lowest applicable
12 mandatory minimum in this case.

13 So I think that that is more than sufficient, even
14 if the Court were to disregard all of the other arguments that
15 I've made. And let's be clear, when I'm talking about the age
16 of consent in Australia, first of all, I am not talking about
17 the child bride in Saudi Arabia or something like that or a
18 jurisdiction where the age of consent is 13 or 14. We are
19 talking about Australia where the age of consent is 16, as it
20 is in many states in this -- in this nation.

21 And so in framing the whole context of willing
22 participation and what's an appropriate sentence, I do think
23 that that is a factor that the Court may take, should take
24 into consideration. But even if we were to disregard all of
25 that, the point that I'm making with the guidelines is that

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1 they are twice, at least twice, as high as they ought to be.
2 And so for those reasons, 15 years is more than sufficient as
3 a deterrent and for every other purpose that criminal
4 sanctions are applicable.

5 THE COURT: Thank you.

6 MS. MERKL: Your Honor, if I may be heard just
7 briefly?

8 MS. DOLAN: Oh, I'm sorry, I just realized -- I'm
9 running up against my flight here, but I can't help myself.

10 I do think we need, at least, a hearing on the
11 restitution issue, if that is going to be imposed, partly
12 because we are going to have to have some expert support.
13 We'd have to have evidentiary support. And I just don't think
14 a demand is sufficient, particularly in light of the
15 psychological complexity and all of the issues that I
16 previously discussed. I mean she is asking for lost wages, so
17 that, I think, needs to be further evaluated and we need an
18 opportunity to challenge it.

19 MS. MERKL: Your Honor, if I may just briefly be
20 heard with regard to the defense argument that Jane Doe here
21 was a willing participant.

22 In the context of conversations over the course of
23 this case, including, yes, in discussions as to whether or not
24 Mr. Price would be amenable to a plea disposition, Ms. Dolan
25 has repeatedly made the argument that if anyone was enticing

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1 anyone, it was Jane Doe attempting to entice the defendant.

2 And, Your Honor, that is exactly the issue here.

3 This is a 16-year-old girl with a history of psychological
4 problems who wants out of her life. And like many 16-year-old
5 girls, she thinks that if she completely escapes her life and
6 creates a new life maybe everything will be better for her and
7 her psychological situation could be restored. I really think
8 that's what's motivating her.

9 Whether or not I used the frame *willing participant*,
10 I don't know, I don't have sufficient recollection of it; but
11 there is no context in which I believe that to be exculpatory
12 as to this defendant.

13 Did she get on the plane willingly? Yes.

14 Did she engage in Facebook chats with him willingly?
15 Yes.

16 I never was arguing and haven't argued ever that
17 this was a case where he was holding a gun to her head,
18 threatening her, forcing her; none of that. And to that
19 extent she was a willing participant in the actions that led
20 to this offense, but was she a knowingly and intentionally
21 consenting voluntarily mature adult person choosing to engage
22 in those actions? Absolutely not, and that is at core of the
23 problem here. So whether or not I used that phrase is of
24 absolutely no moment. Clearly it's deserving of no weight.

25 One other thing I wanted to address with regard to

1 the motivation here, Ms. Dolan made a comment about, who knows
2 what is going on with that family? This girl wanted to get
3 out. The defendant knew quite a bit about what was going on
4 with this girl's family because they discussed it extensively
5 on Facebook. And the entirety of their Facebook chat was
6 entered into evidence as Government Exhibit 21 at trial. And
7 she told him repeatedly how her mother had had some mental
8 health issues, how her brother had attempted to kill himself
9 in very recent proximity to the date of her corresponding with
10 the defendant and, ultimately, coming to travel.

11 She even sent the defendant pictures of like the
12 scene in her house when her father was like dealing with her
13 brother's suicide attempt. And he was very acutely aware that
14 she was coming from a home where there were mental health
15 issues and there was stress and tension in the family and she
16 wanted an escape. He provided her that escape. He sent her
17 pictures of fantastical apartments hoping to give her a vision
18 of a better life and getting her to come here; coupled with
19 the money, that's what made it happen, Your Honor.

20 So, yes, she was willingly getting on the plane
21 because she had a lot of issues in her life, but that does not
22 mean that she was knowingly and voluntarily consenting to
23 statutory rape because, as you know, that's not possible.

24 THE COURT: There is also the issue of the
25 Government's position is that the defendant was engaging in

1 technically pedophilia.

2 Can you address that because it has just been
3 raised?

4 MS. MERKL: Sure, Your Honor.

5 I think that the import of the Kreuger comment, and
6 the comments about the Kreuger report that Ms. Castro made
7 earlier were that it was internally inconsistent. He
8 described that condition as somebody with a sustained interest
9 in somebody who is underage of six months or more. Meanwhile,
10 the evidence in this exact case shows that he had a sustained
11 interest in somebody who was underage for six months or more.
12 There was, in addition to the photographs that were exchanged,
13 Your Honor, there was substantial evidence that they were
14 engaged in video chats. And the texts surrounding those --
15 the lead-up to when they would actually have like a realtime
16 face connect via the sort of video link that is available on
17 Facebook, indicates that the defendant was getting antsy to
18 see what he termed at times *his pussy*.

19 So it is clear, the Government submits, from the
20 evidence in the case, including the Facebook chats, that they
21 were engaged in sort of this realtime video streaming sex
22 display and that the defendant was seeking it out.

23 And so for Dr. Kreuger to conclude that the
24 defendant doesn't demonstrate that characteristic suggests to
25 the Government that he is simply not aware of the evidence in

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1 this case.

2 THE COURT: Let me just ask, I've heard the
3 defense's position on the sentence.

4 Does the Government have a position on the sentence
5 irrespective or taking into account with the guideline
6 calculation?

7 I would like to know what the Government's position
8 is, if any, beyond the guidelines.

9 MS. CASTRO: Your Honor, our position is principally
10 that 15 years is not enough here. The guidelines contemplate
11 significantly higher sentence for a reason. It's been
12 enhanced for things such as the defendant's obstruction, the
13 fact that there was a vulnerable victim here. These are valid
14 enhancements to be applied here.

15 And with respect to the defendant's potential for
16 recidivism, the Court need look no further than the
17 defendant's own inability to take responsibility for his
18 conduct. He does not believe he did anything wrong. Period.
19 This cannot be tolerated, and that speaks volumes of the
20 likelihood that he would re-offend, regardless of age. He
21 didn't care about Jane Doe's age. The Government submits that
22 there should be a sentence significantly above the 15-year
23 mandatory minimum because this defendant, as we stand here
24 today, still shows no remorse.

25 THE COURT: All right, thank you.

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1 All right, anything else from you, Ms. Dolan, before
2 I turn to your client?

3 MS. DOLAN: That's just not what I see from
4 Mr. Price, even after -- I can say that even after all, it's
5 just not -- it's just not -- it's just not the person that I
6 see. And I think part the reason that we are seeing a lot of
7 these filings and so forth is because the guidelines sentence
8 is so ridiculously high for this particular type of conduct.
9 I mean that argument about -- I mean 16 is legal in many
10 states in this nation, and in Australia.

11 So like the whole argument about Dr. -- we all know
12 what a child porn case really looks like, and we've all seen
13 them, and this is not the heartland of what Congress was
14 thinking. That is just my basic point.

15 THE COURT: All right.

16 MS. DOLAN: And I think the Court apprehends that
17 argument.

18 THE COURT: All right, thank you very much.

19 All right, before I sentence you, Mr. Price, is
20 there anything you would like to say?

21 You can stand up if you like. Thank you.

22 THE DEFENDANT: Yes, Your Honor, I do have something
23 to say.

24 I do have remorse, but what happened here is
25 something that was pushed upon me. When I tried to stop

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1 talking to Jane Doe, she called me a few hours later said: I
2 tried to kill myself, I thought you wasn't talking to me no
3 more.

4 I said: Why would you do that? What's wrong with
5 you? Are you okay? Is there anything that I can do from here
6 to help you cope with whatever you're going through?

7 No, no, no. I always do this. I always do this.

8 I said: Well, don't do this because of me, don't
9 try to kill yourself because of me. I don't -- I don't want
10 this type of burden on my shoulders.

11 She said: Oh, well -- um, well, you got it.

12 So, you know, this is -- this is something where I
13 know I was wrong, but the time and -- and the -- and the
14 charges, I just think it's just too much because the only
15 thing that I actually did was help her escape a life that she
16 felt was -- was not right for her.

17 She told me: Oh, I'm getting beat up by my brother.
18 I'm getting beat up by my brother.

19 I'm like: Damn, that's bad. Is he okay? Is the
20 police gonna come?

21 No, no, they're not gonna come. They're not gonna
22 come.

23 And I'm -- you know, I felt like I was a rock and a
24 hard place because I had a job. I was working. I didn't -- I
25 didn't need no girls. I don't have a problem with women at

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1 all. At all. I never did. I have two daughters by two
2 different women in two different countries. I'm -- I'm -- I
3 was doing all right. I was working every night. I was
4 working every day. My boss when asked by Probation would he
5 take me back, he said in the blink of an eye because I'm not a
6 bad person and I never was.

7 What is going on in this -- in this courtroom with
8 this case, I just think it's just ridiculous. It's just
9 ridiculous. The only thing that I actually did was try to
10 help this girl. And I never, never, never initiated sex. I
11 never initiated sex with this girl. When I saw her, I was
12 like, yeah, this is a kid. All I tried to do was help her. I
13 could not at that point in time take her back to the airport
14 or tell her to go about her way because she was vulnerable
15 like they said, but it wasn't vulnerable to the point to where
16 I was trying to use her or do anything to hurt this girl.
17 That was never in my intentions. I have two little girls.
18 The only thing that I tried to do with this girl was help her.

19 When it got out of hand and everything else
20 happened, there was nothing else that I could do. There was
21 nothing that I could do but try to -- but try to -- try to
22 dampen the blow. Try to -- try to -- try to help myself by --
23 by thinking about a way to get out of it because I don't -- I
24 don't think that -- I don't think that what time is -- what
25 time is being talked about is warranted for the actions that I

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1 did. She was having sex with -- I don't think -- I don't
2 think that the charges, the time, I just don't think it's
3 right.

4 If I would have let -- if I would have let that girl
5 do whatever she wanted to do, she would have -- she would have
6 probably put her death on my hands. So -- so I thought that I
7 was doing something to help her at all costs. I would never
8 want nobody's death to be on my hands whether she's in Japan
9 or if she's in Switzerland. She was talking to me every day.
10 So yeah, she was a friend, and I tried to do the best I can to
11 help her get out of the situation that she thought was the
12 worse thing that -- that was a part of her life.

13 THE COURT: Well, the Court is obligated to review
14 certain factors in connection with the imposition of sentence.
15 Among them are the need to reflect the seriousness of the
16 offense, to promote respect for the law, and to provide just
17 punishment for the offense, to afford adequate deterrence to
18 criminal conduct, to protect the public from further crimes of
19 the defendant, to provide the defendant with needed education
20 or vocational training, medical care, other correctional
21 treatment, and as set forth in 18 United States Code
22 Section 3553(a).

23 The defendant is in Criminal History Category VI.
24 He started his career of crime at the age of 17 by driving a
25 motor vehicle at over 70 miles an hour and skidding into a

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1 tree killing someone else in the car and then pleading guilty
2 to negligent homicide. He moved on at age 18, the possession
3 of a concealed weapon in New Jersey, then to criminal
4 possession of a controlled substance in Queens, then to
5 attempted criminal attempt in Queens, then to assault in the
6 third degree in Queens at age 28 where he threw a chair at his
7 former common law wife causing scratches and bruising the
8 victim's back. And then at age 30 he was convicted of
9 criminal contempt in connection with going to his wife's, a
10 romantic partner's place of business and screaming at her.
11 Also, reckless driving, resisting arrest, and unlawful fleeing
12 in a separate case. And then at age 31 resisting arrest, and
13 then at 32 resisting arrest. And at age 37 disorderly
14 conduct.

15 So that is just a thumbnail sketch of the
16 defendant's criminal history. To say it's Criminal History
17 Category VI is to say a lot. There are very few defendants
18 that I sentence in Criminal History Category VI. So we can
19 start with that.

20 And so the very idea that the defendant was just
21 trying to help is just rejected by the Court. The defendant
22 sent money to this person living in Australia, who he knew to
23 have difficult psychological problems, to bring her to the
24 United States, drive her across the United States, and then
25 shack up with her in his parents' basement in Queens. And the

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1 purpose of this was to help, according to the defendant. She
2 forced him to do it. She threatened that she might do injury
3 to herself.

4 It would seem to me the thing to do if someone did
5 something like that is to call the authorities, if you feel
6 that strongly call the authorities halfway across the world
7 and tell them that this is a person who needs an intervention,
8 not a person who needs a flight of 10,000 miles to Los Angeles
9 at the age of 16. Certainly, a 39-year-old man knows better.
10 A 39-year-old man who has two children who's been in a number
11 of relationships knows better. There is no excuse.

12 And the idea that, sir, you would come to this court
13 and say you were just trying to help her because she could not
14 help herself is rejected totally by this court; totally.
15 There needs to be, in my opinion, a sentence imposed that acts
16 as a deterrence to this kind of conduct. To me deterrence is
17 the most important element or factor in this case.

18 This defendant has had many chances to mitigate, to
19 turn his life around, to be a good citizen. There is a point
20 at which one has to say this is just not happening. And the
21 victim in this case is further injured beyond what her
22 condition was when she left Australia, is further injured by
23 the actions of this defendant. You don't just get to play
24 around with people for your own satisfaction and leave the
25 people further injured, further tainted, further harmed. So I

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1 don't buy it. It is unacceptable. And, frankly, I agree with
2 Congress, not all the time, but I will tell you I agree with
3 them about this guideline and with the Sentencing Commission
4 because the best way to deter this kind of behavior is to tell
5 adults that if you do it, you are going to pay. And today is
6 your day of reckoning.

7 So, you may stand to be sentenced.

8 Are you ready to be sentenced? Are you ready to be
9 sentenced?

10 THE WITNESS: No, I still would like -- I still have
11 something to say.

12 THE COURT: What would you like to say?

13 THE DEFENDANT: You just --

14 THE COURT: He wants to say something.

15 THE DEFENDANT: You described my criminal history.

16 In '95 there was a car accident. The guy in the car had a
17 gun. He said: Don't stop, Sean, Imma shoot you. The car --
18 I sped off, the car flipped over. Yes, that did happen.

19 After that, after that you mentioned -- you
20 mentioned something about another case that I had where I
21 resisted arrest. Oh, yeah, I went to go see my daughter. The
22 mother of my child told me my daughter was sick. She said,
23 You should come see her. So what I did was I got in my car
24 and I went to go see her. What happens was she calls the
25 police. So yes, I ran because I was guilty of nothing, but

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1 trying to take care of my daughter.

2 After that resisting arrest, I was not -- I was
3 arrested for resisting arrest because I was running because I
4 wasn't guilty of anything. I'm -- I'm not a man that -- that
5 shuns from responsibility or doesn't know when he does
6 something wrong. I always know when I do something wrong and
7 when I do, I plead guilty because I know that I did something
8 wrong.

9 But in this case --

10 MS. DOLAN: You've already said that.

11 THE DEFENDANT: But in this instant she told me she
12 was gonna kill herself. I didn't know -- I didn't know -- I
13 didn't know what to do. Maybe that's my fault and I'll take
14 that, but I didn't know what to do when she told me that and
15 that wasn't the first time she told me that. Take
16 responsibility for the charges and the time, I guess -- I
17 guess -- I guess I can't say nothing else.

18 THE COURT: Are you ready to be sentenced?

19 THE DEFENDANT: Yes.

20 THE COURT: All right.

21 On Count One interstate enticement to engage in
22 illegal sexual activity, I sentence you to 240 months in the
23 custody of Attorney General. On Count Two, interstate and
24 foreign transportation of a minor for illegal sexual activity,
25 I sentence you to 420 months in the custody of the Attorney

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1 General. On Count Three, Mann Act, intent to rape, I sentence
2 you to 120 months in the custody of Attorney General. And on
3 Count Four, attempted sexual exploitation of a child, I
4 sentence you to 360 months in the custody of the Attorney
5 General.

6 All of these sentences are to run concurrently, so
7 your sentence, effectively, is 420 months in the custody of
8 the Attorney General. Your supervised release on all four
9 counts is 120 months to run concurrently with each other.

10 I am going to impose certain special conditions.

11 You shall comply with any applicable state and/or
12 federal sex offender registration requirements as instructed
13 by the probation officer, the Bureau of Prisons, any state
14 offender registration agency in the state where you reside,
15 work, or work as a student.

16 You shall comply with orders of restitution and
17 forfeiture imposed by this Court.

18 Upon request you shall provide the Probation
19 Department with full disclosure of your financial records,
20 including comingled income, expenses, assets and liabilities;
21 to include yearly income tax returns. With the exception of
22 financial accounts reported and noted within the pre-sentence
23 report, you are prohibited from maintaining and/or opening any
24 additional individual and/or joint checking, savings or other
25 financial accounts for either personal or business purposes

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1 without the knowledge and approval of the Probation
2 Department.

3 You should cooperate with the probation officer in
4 the investigation of your financial dealings and shall provide
5 truthful monthly statements of your income and expenses.

6 You shall cooperate in the signing of any necessary
7 authorization to release information forms permitting the U.S.
8 Probation Department access to your financial information and
9 records.

10 You should not associate with any children under the
11 age of 18 unless a responsible adult is present and you have
12 prior approval from the Probation Department. If cohabit with
13 an individual who has a minor child, you will inform the other
14 party of your prior criminal history concerning your sex
15 offense. Moreover, you will notify the party of the
16 prohibitions of associating with any child under the age of 18
17 unless a responsible individual is present.

18 You shall refrain from contacting the victim of the
19 offense unless specific permission is granted by the Probation
20 Department and this Court. This means that you shall not
21 attempt to meet in person, communicate by letter, telephone,
22 mail, the Internet, or through a third-party without the
23 knowledge and permission of the Probation Department and this
24 Court.

25 You are not to use a computer, Internet-capable

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1 device or similar electronic device to access pornography of
2 any kind. The term pornography shall include images or video
3 of adults or minors engaged in sexually explicit conduct as
4 that term is defined in 18 United States Code Section 2256(2).

5 You shall not use a computer, Internet-capable
6 device or similar electronic device to view images of naked
7 children. You shall not use your computer to view pornography
8 or images of naked children stored on related computer media
9 such as CD or DVDs and shall not communicate via your computer
10 with any individual or group that promotes the sexual abuse of
11 children.

12 You shall also cooperate with the U.S. Probation
13 Department's computer and Internet Monitoring Department.
14 Cooperation shall include, but shall not be limited to,
15 identifying computer systems, Internet-capable devices, and/or
16 electronic devices that you have access to and allowing the
17 installation of monitoring software/hardware on said devices
18 at your expense.

19 You shall inform all parties that have access to the
20 monitored computer or similar electronic device that the
21 device is subject to search and monitoring.

22 You may be limited to possessing only one personal
23 Internet-capable device to facilitate the Probation
24 Department's ability to effectively monitor your Internet-
25 related activities. You shall also permit random examinations

1 of such computer systems, Internet-capable devices, similar
2 electronic devices and related computer media, such as CDs,
3 under your control.

4 You shall report to the probation office any and all
5 electronic communication, service accounts, used for user
6 communications, dissemination or storage of digital media
7 files. This includes, but not limited to, e-mail accounts,
8 social media accounts, cloud storage accounts. You shall
9 provide each account identifier and password and shall report
10 the creation of new accounts, changes in identifiers and/or
11 passwords, transfers, suspension or deletion of any account
12 within five days of such action. Failure to provide accurate
13 account information may be grounds for revocation of release.

14 You shall permit the probation office to access and
15 search any accounts using your credentials pursuant to this
16 condition only when reasonable suspicion exists that you have
17 violated a condition of your supervision and the account to be
18 searched contains evidence of this violation. Failure to
19 submit to a search may be grounds for revocation of release.

20 You shall participate in mental health treatment
21 program, which may include participation in a treatment
22 program for sexual disorders as approved by the Probation
23 Department. You shall contribute to the cost of such services
24 rendered and/or any psychotropic medications prescribed to the
25 degree you are reasonably able, and shall cooperate in

1 securing any applicable third-party payment.

2 You shall disclose all financial information and
3 documents to the Probation Department to assess your ability
4 to pay. As part of the treatment program for sexual
5 disorders, you will participate in a polygraph examination to
6 obtain information necessary to establish risk management and
7 correctional treatment.

8 You shall submit your person, property, house,
9 residence, vehicle, papers, computers, other electronic
10 communications or data storage devices or media or office to a
11 search conducted by a United States probation officer.
12 Failure to submit to a search may be grounds for revocation of
13 release.

14 You shall warn any other occupants of the premises
15 that they may be subject to searches pursuant to this
16 condition. An officer may conduct a search pursuant to this
17 condition only when reasonable suspicion exists that you have
18 violated a condition of your supervision and that the areas to
19 be searched contain evidence of this violation. Any search
20 must be conducted at a reasonable time and in a reasonable
21 manner.

22 There is a \$400 special assessment, which is
23 mandatory. You are subject to a forfeiture provision and to
24 restitution.

25 The defense has asked for a hearing on the

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1 restitution issue, correct?

2 MS. DOLAN: Yes.

3 THE COURT: I will set a hearing date for the
4 restitution issue. If the parties agree to an amount of
5 restitution, which is mandatory, but an amount, prior to such
6 a hearing, you should advise the Court of that agreement. And
7 the forfeiture provision is for the two cell phones.

8 Is that right?

9 MS. CASTRO: That's correct, Your Honor.

10 THE COURT: Ms. Orenstein?

11 MS. ORENSTEIN: Yes, Your Honor. We can hand up a
12 proposed order of forfeiture now.

13 THE COURT: Have you shown it to the defense?

14 MS. DOLAN: Wait. I just object. I literally
15 received this as a walked in. So I would just say that I
16 think under Riley and Carpenter, I would like to make the
17 argument that, you know, a phone is like a house. You don't
18 take the whole house just because a crime is committed in it.
19 We now understand that cell phones are a lot more than just
20 that.

21 So I think it's academic, but I would like to put it
22 on the record that we object to the forfeiture.

23 THE COURT: All right.

24 MS. ORENSTEIN: Let me say that Ms. Dolan received a
25 copy of it a good 15 minutes before we started.

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1 THE COURT: Well, she's been busy, but she's made
2 her objection.

3 MS. DOLAN: Thank you.

4 THE COURT: And the objection is on the record.

5 MS. ORENSTEIN: Thank you, Your Honor.

6 THE COURT: I will consider it. I am not going to
7 rule on it now.

8 MS. DOLAN: Actually, I didn't even walk into the
9 courtroom until 5 minutes before, whatever.

10 THE COURT: Whatever.

11 MS. DOLAN: Thank you.

12 THE COURT: The fact is I am not going to act on it
13 now. If you wanted to put something in writing --

14 MS. DOLAN: Thank you.

15 THE COURT: You can do so within seven days.

16 MS. DOLAN: Thank you.

17 THE COURT: And the parent of the victim did submit
18 a report of the amount of restitution that they are claiming,
19 right --

20 MS. CASTRO: That's correct, Your Honor.

21 THE COURT: -- Ms. Castro?

22 I think it is about \$40,000, is it not?

23 MS. DOLAN: I believe it's 50 U.S., in there,
24 thereabouts.

25 MS. CASTRO: 50,391 U.S. dollars.

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1 THE COURT: Okay, 50,000.

2 So I will set a date for a hearing. You do a lot of
3 traveling, so --

4 MS. DOLAN: I am going to miss a plane actually
5 right now, so if I could be allowed --

6 THE COURT: We are about to finish.

7 MS. DOLAN: If I could be in touch with Mr. Reccoppa
8 and the Government about a date?

9 THE COURT: Yes.

10 MS. DOLAN: Thank you.

11 THE COURT: I would like to do it soon because I
12 want to issue a judgment here in the immediate future.

13 I am not imposing a fine, as restitution is a
14 priority. And before I discuss appeal, is there anything else
15 from the Government?

16 MS. CASTRO: No, Your Honor.

17 THE COURT: Anything else from you?

18 MS. DOLAN: Nothing further, thank you.

19 THE COURT: All right.

20 Mr. Price, you have the right to appeal your -- you
21 may sit. You have the right to appeal your conviction and
22 sentence to the United States Court of Appeals for the Second
23 Circuit. Your time to appeal is extremely limited. You
24 should discuss with your attorney at once whether you wish to
25 appeal and whether an appeal would be worthwhile. You have

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1 14 days from the date of the judgment. I think it's the
2 judgment.

3 MS. CASTRO: Yes, Your Honor.

4 THE COURT: The judgment.

5 MS. MERKL: Entry of judgment.

6 THE COURT: Entry of judgment to file a notice of
7 appeal.

8 Do you understand your right to appeal?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: And, Ms. Dolan, you will discuss the
11 defendant's right to appeal with him immediately?

12 MS. DOLAN: I've already discussed it, and we do
13 intend to file a notice.

14 THE COURT: Okay, very good. Please do it timely.

15 MS. DOLAN: Yes, of course.

16 THE COURT: Is there anything today from the
17 Government?

18 MS. CASTRO: No, Your Honor.

19 THE COURT: Anything else from the defense?

20 MS. DOLAN: No, thank you.

21 THE COURT: All right, we are adjourned.

22 MS. MERKL: Thank you, Your Honor.

23

24 (Matter adjourned.)

25

SAM OCR RMR CRR RPR

I certify the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.
/s/ Stacy A. Mace March 15, 2019